



### REMARKS

The Examiner has maintained the requirement that Applicants make a showing under Rule 1.608(b) in order for the Patent Office to declare an interference against U.S. Patent No. 6,361,943 ("the '943 patent"). Acknowledging that "the MPEP may be misleading," the Examiner has cited 35 U.S.C. § 104(a)(1) permitting applicants to "establish a date of invention" in a NAFTA and WTO country.

Applicants respectfully submit that "establishing a date of invention" is not the same as using a foreign priority date for the purpose of determining whether a Rule 1.608(b) showing is required. Further, Applicants respectfully request that the Examiner consider this scenario: the '943 patent cannot be used as 102(e) prior art against the present application, because its 102(e) date (June 2, 1999) is later than the effective filing date of the present application (January 21, 1997); the present application, had it been issued before the '943 patent was issued, would not have been prior art against the '943 patent, because the '943 patent could use the foreign priority date of October 17, 1996 as a "shield." Consequently, both patents covering essentially the same subject matter would issue to different patentees. An interference proceeding is the exact solution to this problem. Therefore, a Rule 1.608(b) showing should not be imposed upon the Applicants, in order for the Patent Office to declare an interference against the '943 patent.

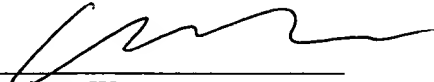
Nevertheless, to expedite the prosecution, Applicants have enclosed with this Response a Statement Under Rule 1.608(b), including declarations by (1) Dr. Richard W. Roberts, a named inventor of the present application and (2) Dr. David Wilson, a corroborating witness. The respective declarations also include exhibits as appropriate. The Statement Under Rule 1.608(b), and the accompanying declarations and exhibits, are submitted as separate documents, and Applicants respectfully request that the enclosed submissions are kept separate from the application file and not made available to the opposing party until after an interference has been declared and preliminary motions have been decided by the APJ.

In view of the enclosed documents, Applicants submit that an interference against U.S. Patent No. 6,361,943 should be declared. Applicants petition for a five-month extension of time

for submission of this response. Please charge our Deposit Account No. 18-1945, under Order No. COTH-P07-701 from which the undersigned is authorized to draw.

Dated: October 7, 2004

Respectfully submitted,

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